IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6171 of 2000

with

SPECIAL CIVIL APPLICATION No 1639 of 1990

and
SCA No.5260 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

G S R T CORPN

Versus

GIRISHBHAI V PATEL

Appearance:

1. Special Civil Application No. 6171 of 2000
MR HARDIK C RAWAL for Petitioner
MR MUKESH H RATHOD for Respondent No. 1

2. Special Civil ApplicationNo 1639 of 1990
Mr. K.B.Pujara for the petitioner-absent
MR HARDIK C RAWAL for respondent

3. Special Civil Application oNo. 5260 of 1990
MR. HARDIK C RAVAL for the petitioner
MR. MUKESH H. RATHOD for the respondent no.1.

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 27/07/2000

ORAL JUDGEMENT

Rule. Mr. Upadhaya for Mr. M.K.Rathod waives service of notice of Rule on behalf of the respondent in SCA No. 6171 of 2000 and Mr. Hardik Raval waives service of Notice of Rule on behalf of respondent in SCA No. 1639 of 1990 .

#. All these three Special Civil Applications are between the same parties and raise the same questions of fact and law and are therefore, disposed of by this common judgment and order.

#. The respondent Girishbhai V.Patel was working as a conductor under the Gujarat State Road Transport Corporation (hereinafter referred to as the Corporation). The respondent while on duty on 13.12.1985 on Porbandar-Bhuj route, a surprise check was conducted in the bus. During the surprise check, it was noticed that the respondent has reissued certain tickets to the passengers which were already used earlier by other passengers and therefore, he has misappropriated the public money. On this allegation, a charge sheet was submitted to the respondent and departmental proceeding was started against the respondent. The Disciplinary Authority after taking the evidence and after hearing the respondent found that the charges framed against the respondent were proved. The Disciplinary Authority after considering the inquiry report and after issuing notice to the respondent dismissed the respondent from service by order dated 29.8.1989. However, since there was a dispute pending between the Corporation and the respondent-workman, the Corporation filed an application before the Conciliation Officer for approving the order of dismissal of the respondent. The application for approval was dismissed by the concerned authority by order dated 10.11.1989 holding that no prima-facie case

was made out against the respondent.

#. Aggrieved by the said order passed by the Conciliation Officer the Corporation filed SCA No.5260 of 1990. The respondent also filed SCA No. 1639 of 1990 for implementation of the order passed by the Competent Authority rejecting the application of the Corporation and both the SCAs are[also disposed of along with the main SCA No. 6171 of 2000. Thereafter the respondent filed Recovery Application No. 345 of 1996 before the Labour Court, Bhuj. The Labour Court after hearing the parties passed an order for payment of Rs. 1,96,871/- to the respondent towards his back wages, HRA and other benefits. The Labour Court also awarded interest on the unpaid amount at the rate of 9 percent per annum and also costs quantified at Rs. 1000/-. Having felt aggrieved by the aforesaid order passed by the Labour Court, Bhuj in Recovery Application No. 345 of 1996, the Corporation has filed SCA No. 6171 of 2000.

#. The questions raised are what will be the status of the order of dismissal and that of the dismissed employee between the date of dismissal and approval of dismissal under the provisions of the Industrial Disputes Act and whether the employee becomes entitled to being treated as never to have been dismissed from service if the application filed by the employer under section 33(2)(b) of the I.D.Act is not approved and whether the requirement of approval under section 32(2)(b) a mere technicality the non compliance of which does not vitiate the order or is it a condition precedent to the order being rendered valid and whether the order of dismissal remain inchoate and is not effective till it is approved under Section 33(2)(b) of the I.D.Act. These questions were raised before the Apex Court in the case of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. vs. Ram Gopal Sharma and anor. reported in (1994) 6 SCC 522 . The Apex Court, after considering various judgments rendered by the Supreme Court came to the conclusion that there are rival or conflicting decisions on the aforesaid four points by different benches of the Supreme Court and accordingly the case was referred to Larger Bench for settling the question for all time to come. After going through the aforesaid decision of the Apex Court, I am of the view that there are conflicting decisions on the four points which are also questions raised in all the petitions. Having regard to the fact that the respondent was dismissed from service on 28.8.1989 i.e. about 11 years back and some time will be taken for deciding the questions raised in all these SCAs, in view of the reference of these questions made to the Larger Bench of

the Supreme Court, I am of the view that the respondent-workman who is at present not in employment will face more financial stringencies. It may take another 4-5 years to decide all the petitions referred to the Larger Bench of the Apex Court. Having regard to all these facts and circumstances I am of the view that the respondent should be reinstated in service so as to enable him to earn his livelihood. I am of the view that he should not be paid salary and allowances as awarded by the Labour Court, Gandhidham-Kutch by it order dated 3.5.2000 in Recovery Application NO.345 of 1996.

#. Mr. Upadhaya for Mr. M.K.Rathod learned counsel on behalf of the respondent has also agreed for the reinstatement of the respondent in service of the Corporation. However, he submitted that the respondent was working as a conductor and now he may be reinstated as Helper. However, such a request cannot be entertained at this stage because the respondent was dismissed from the post of conductor and therefore, he can be reinstated in the post of conductor only. If the respondent wishes to change his duties from the post of conductor to that of helper, he may make an application before the Competent Authority of the Corporation and if such an application is made, the Competent Authority of the Corporation shall consider the same sympathetically. Having regard to all these facts and circumstances especially considering the hardship faced by the respondent workman, I am of the view that the respondent workman is required to be reinstated in service and he may not be paid backwages as he has not worked during all this period. Thus the respondent workman is ordered to be reinstated in service on his original post with continuity of service but without any back wages, interest and costs. The Corporation is directed to reinstate the respondent in service within four weeks from the date of receipt of this order. With the aforesaid modification and directions in the order of the Labour Court, Gandhidham-Kutch, the SCA No.6171 of 2000 is allowed .Rule is made absolute in SCA No.6171 of 2000. SCA Nos.5260 of 1990 and 1639 of 1990 are dismissed. Rule discharged in these two SCAs. No order as to costs in all the three SCAs.

Sd/-

(P.K.Sarkar.J)

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